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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,343	06/25/2003	Joanne Mary Holmes	F3311(C)	2624

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EXAMINER	
CHAWLA, JYOTI	
ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/603,343	HOLMES ET AL.	
	Examiner	Art Unit	
	Jyoti Chawla	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 April 2006*.

2a)☒ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The response filed April 20, 2005 has been entered. Claims 1-9 remain pending in the application. Claims 2-8 have been amended and claim 9 has been added to he application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

(A) Claims 1, 3 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Koene et al (US 4534983).

For rejections of claims 1 and 3 please refer to the office action dated January 17, 2006.

Claim 9 recites that the fabricated leaf tea product gives an infusion under 10 to 15 seconds with water at a temperature between 80-90^{0}C. It was known in the art that teas give some infusion in a few seconds after hot water is added. It was also known in the art that tea-dispensing machines heat the water in the range of 80 -90^{0}C and infuse the tea for 10-15 seconds before dispensing, for example, as admitted by the applicant at page 7 (lines 27-30) of the specification. Koene teaches a method of combining tea with vegetable derived flavors (powdered or microencapsulated) to make a stable flavored combination tea product. Given these teachings and the fact that the reference anticipates the claimed method, one would also expect similar properties of infusion to result absent any clear and convincing evidence or arguments to the contrary.

Applicant is reminded that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or

substantially identical processes, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

(B) Claims 1-4 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Carns et al (EP 0910956A1).

For rejections of claims 1-4 please refer to the office action dated January 17, 2006. Claim 9 recites that the fabricated leaf tea product gives an infusion under 10 to 15 seconds with water at a temperature between 80-90^{0}C. The tea product taught by Carns contains leaf tea and dried soluble tea solids, packaged in tea bags for making cold brewed iced tea. The combination tea product taught by Carns, as well as the commercial tea bags tested by Carns, give an infusion in 90 seconds at 22^{0}C water (Table 2, page 5, lines 45-55). It was known in the art that tea infuses much faster in hot water as compared to cold water. Given these teachings and the fact that the reference anticipates the claimed method, one would also expect similar properties of infusion to result absent any clear and convincing evidence or arguments to the contrary.

Applicant is further reminded that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430,

433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Claim Rejections - 35 USC § 103

Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koene (US 4534983) as applied to claims 1 and 3 above, and further in view of Hampton et al (GB 2239305 A) and further in view of Menzi et al (US 6056949) as disclosed in the office action dated January 17, 2006.

Examiner's Note: Claim 4 is currently included in the rejection. Although the recitation of claim number 4 was inadvertently omitted from the rejection in the previous Office action, it is clear from the record that claims 5-6 were and are obviously dependent upon claim 4, and because the limitations of the claim (i.e. fluidized bed, etc.) were addressed on the record at page 6 of the office action dated January 17, 2006, no new grounds of rejection are set forth herein. The recitation of this claim corrects the matter, and any inconvenience to applicant is regretted.

Response to Arguments

Applicant's arguments filed April 20, 2006 have been fully considered but they are not persuasive. Applicant is referred to the office action dated January 17, 2006 for the detailed rejection.

(A) Response to rejection under 35 USC 102(b): Koene et al (US 4534983)

Regarding applicant's argument that Koene et al, hereinafter Koene, does not anticipate claims 1 and 3 and does not teach fabricated leaf tea product comprising mixing leaf teas with tea solids derived from tea powders where the mixture is simultaneously wetted and dried. Applicant is directed to Koene, abstract, column 1 (specially lines 46-65), column 2 (specially lines 10-20 and 24 to 32) where the reference teaches that tea leaves combined with a flavor component (which can be either microcapsule or powdered flavor) has been known in the art. Koene also teaches that the flavor can either be a vegetable powder or microencapsulated flavor, and tea is a vegetable matter (see column 1, lines 5-8). Koene further teaches mixing of tea-leaves and flavor followed by water based adhesive spray on the mixture, i.e., tea and flavor wetted together (Column 2, lines 15-20) and drying the mixture together (column 2, lines 24-35).

Regarding applicant's statement that Koene does not teach the appropriate moisture content, applicant is directed to column 2, lines 39-43 and 49-50, where Koene teaches tea with 12% or less moisture content which means the moisture content of tea product taught by Koene ranges from 0-12%, which meets applicant's range.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the product giving an infusion under 10-15 seconds" which is addressed in newly added claim) are not recited in the rejected claim 1 and 3. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(B) Response to rejection under 35 USC 102(b): Carns et al (EP 0910956 A1)

Regarding applicant's argument that Carns et al do not anticipate claims 1-4 and do not teach fabricated leaf tea product comprising mixing leaf teas with tea solids derived from tea powders where the mixture is simultaneously wetted and dried. Applicant is directed to Carns et al, hereinafter Carns, abstract, Page 2 (specially lines 26-36), Page 3 (specially lines 12-30 and 38-40) where the reference teaches tea leaves combined with and tea solids. Carns also teaches that tea powders have been known in the art (Page 2, lines 10-22). Carns also teaches coating of tea-leaves with tea powder (Page 2, line 34). Carns teaches various methods of adding powdered tea flavor and aroma to the tea (Page 3, lines 50-51 and lines 38-40) where the flavor powder may be added to the tea mixture and the mixture wetted together when the tea concentrate is sprayed on to the leaves (Page 3, lines 40-45). Carns further teaches that the mixture may be simultaneously or separately dried. Thus Carns teaches the claimed wetting and drying of the tea leaves and tea powders together.

Regarding claim 2, applicant is referred to Carns Page 3, lines 46-47, where Carns teaches the powder content of the tea product in the recited range.

Regarding claim 3, applicant is referred to Carns Page 5, lines 30-31, where Carns teaches the moisture content in the recited range.

Regarding claim 4, applicant is referred to Carns Page 3, lines 43-44, where Carns teaches the use of fluidized bed drier as recited.

(C) Response to arguments under 35 U.S.C. 103(a) Koene et al in view of combination of Hampton et al (GB 2239305 A) and Menzi et al (US 6056949). Applicant argues that the combination of references does not teach the use of fluidized bed, heated water spray and applicant's recited temperature range and that Hampton and Menzi can not be combined with Koene for claims 5-8. In response to applicant's argument, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Regarding claims 4-8, Koene teaches drying of combined tea product (Column 2, lines 24-36) and spraying the product with water based adhesive. However Koene does not teach the fluidized bed drier as recited by the applicant in claims 4-8. Koene is also silent as to the water (aqueous adhesive) and air temperature in the drying equipment. Hampton teaches the use of fluidized bed for drying tea because the conventional tea driers do not provide simultaneous regulation of optimum temperature and moisture to obtain a dried tea product with consistent good quality (page 3). Menzi et al, hereinafter Menzi, teaches a process of making granulated flavorings for tea (example 6) and use the fluidized bed apparatus (column 1, line 61), the temperature according to Menzi ranges from 30-80^{0}C (column 2, lines 49-51) which includes applicant's recited range for temperature of fluidized bed for claims 6-8. Regulation of drying temperature affects

the aroma and overall quality of teas. Since aroma and flavor are important characteristics for a good quality tea product. Given the advantages of fluidized bed in drying tea products as taught by Hampton and Menzi, it would have been obvious to one with ordinary skill in the art to modify Koene and use the fluidized bed as taught by Hampton, to obtain a more consistent, higher quality tea product.

Regarding the temperature of water (aqueous solution) for wetting the tea product, one would have been motivated to use water that has been heated in the range of 30-80^{0}C to spray on the dry tea mix in order to maintain the temperature of the fluidized bed between 30-80^{0}C (as taught by Menzi) and make the process more energy efficient. If cold water were to be used to wet the tea product, more energy would be required to bring the temperature of the wet tea product at par with the set temperature of the fluidized bed. Cold water sprayed tea product would also need longer drying time and as a result the final tea product would lose some aroma. Therefore, to modify Koene, based on the teachings from Hampton and Menzi, and use the fluidized bed set for drying between 30-80^{0}C and use hot water (aqueous solution) to wet the dry tea mix would have been more energy efficient and would also yield a higher quality product. One skilled in the art would have been motivated to generate the claimed invention with a reasonable expectation of success.

Thus Koene in view of combination of Hampton and Menzi render applicant's claims 4-8 obvious.

Applicant further argues that none of the references relied on by the Examiner do not describe a process for making a fabricated leaf tea product that gives infusion as

described in newly filed claim 9. Claim 9 has not been addressed in the previous office action dated Jan 17, 2006 as it has only been added as part of the amendment dated April 20, 2006. Regarding the limitation please refer to the rejection of claim 9 above.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the product giving an infusion under 10-15 seconds" which is addressed in newly added claim) are not recited in the rejected claim 1 and 3. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Remarks/ Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jyoti Chawla 7/6/06
Jyoti Chawla
Examiner
Art Unit 1761

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KEITH HENDRICKS
PRIMARY EXAMINER